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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,145	09/16/2003	Randy Alan Sutton	SYN.P.US0037	2162
26360	7590	09/21/2004		
RENNER, KENNER, GREIVE, BOBAK, TAYLOR & WEBER FIRST NATIONAL TOWER FOURTH FLOOR 106 S. MAIN STREET AKRON, OH 44308			EXAMINER PRUNNER, KATHLEEN J	
			ART UNIT 3751	PAPER NUMBER

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/663,145

Applicant(s)

SUTTON ET AL.

Examiner

Kathleen J. Prunner

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 091603
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

1. The following informalities in the specification are noted: (A) on page 1, line 15, in the parenthetical expression, the italics are improper since only Reissue applications are permitted to use italics; (B) on page 5, on line 12, "Figs. 2 and 3" should be changed to read --Fig. 2-- since there is no Fig. 3 (see page 4 in the Brief Description of the Drawings); and (C) on page 9, line 2, "comprising" should read --comprises--. Appropriate correction is required.
2. The following informalities in the claims are noted: (A) in claim 6, on lines 1 and 2, "endcount" should read --end count--.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 3 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for "the warp yarns are about .004 to 0.009 inches (0.102 to 0.229 mm thick" (note lines 20-21 on page 5), does not reasonably provide enablement for "fill yarn has a thickness of about 0.004 to 0.009 inches (0.102 to 0.229mm)" as called for by claim 3. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with this claim.

### *Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claims 1, 2 and 4-8 are rejected under 35 U.S.C. 102(a) as being anticipated by Zell et al. Zell et al. disclose a woven pool cover having all the claimed features including thermoplastic (note the first sentence in ¶ 0033) warp and fill yarns (note ¶ 0023) that provides at least 95% shade (note the first sentence in ¶ 0018). With respect to claim 2, Zell et al. also disclose that the warp yarn has a denier from 500-700 deniers (note ¶ 0023). With respect to claim 4, Zell et al. further disclose that the thermoplastic yarns are a polyolefin (note the first sentence in ¶ 0033). With regard to claim 5, Zell et al. additionally disclose that the polyolefin is polypropylene (note the first sentence in ¶ 0033). With regard to claim 6, Zell et al. also disclose that the warp yarn has 30 to 40 threads per inch and the fill yarn has 10 to 20 threads per inch (note ¶ 0022). With respect to claim 7, Zell et al. further disclose that the woven pool cover provides 100% shade (note ¶s 0018 and 0029). With regard to claim 8, Zell et al. also disclose that the woven pool cover is permeable to air to the extent of from 5 CFM to 30 CFM (note ¶ 0028).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zell et al. Zell et al. also disclose that the fill yard has a thickness or diameter of approximately 3000 denier or 0.076 inches and that the warp yarn has a thickness or diameter of approximately 525 denier or 0.026 inches (note the last sentence in ¶ 0033). Although it is considered that the yarn thickness or diameter necessary to effect a 100% shading is an obvious expedient to the skilled artisan, to use a yarn thickness or diameter of about 0.004 to 0.009 inches in Zell et al. to effect 100% shading is simply the result of optimization of the prior art teachings through routine

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experimentation, which is not a matter of invention, absent a showing to the contrary (see *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955), and *In re Hoeschele*, 406 F.2d 1403, 160 USPQ 809 (CCPA 1969).

### *Conclusion*

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kathleen J. Prunner whose telephone number is 703-306-9044.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen J. Prunner

September 16, 2004



GREGORY L. HUSON  
SUPERVISORY PATENT EXAMINER  
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